

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Petition of)
Lakeside Broadcasting Corporation)
Amendment of Section 73.202(b),)
FM Table of Allotments,)
(Vergennes, Vermont and)
Keeseville, New York))

MM Docket No. 96- _____

RM- _____

DOCKET FILE COPY ORIGINAL

PETITION FOR RULE MAKING

Lakeside Broadcasting Corporation ("LBC"), by its counsel, hereby submits its petition for rule making ("Petition") to amend Section 73.202(b) of the Commission's Rules to delete Channel 244A, Vergennes, Vermont, add Channel 244A, Keeseville, New York, and modify the authorization for WXPS(FM), Vergennes, Vermont, to operate on Channel 244A at Keeseville, New York. In support hereof, LBC states as follows:

1. LBC operates FM Radio Broadcast Station WXPS(FM), Vergennes, Vermont, on Channel 244A pursuant to program test authority.¹ Two commercial Radio Broadcast Stations are licensed to Vergennes, Vermont: WXPS(FM) and WIZN(FM).

2. The instant Petition proposes to delete Channel 244A from Vergennes, Vermont, add Channel 244A to Keeseville, New York, and

¹ LBC holds a construction permit for WXPS (File No. BMPH-950626IJ). LBC has pending an application (File No. BLH-960702KB) for license to cover the construction permit.

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modify the authorization for WXPS(FM) accordingly. Commission grant of this amendment to Section 73.202(b) of the Rules (the "FM Table of Allotments") would comply with the requirements of Section 1.420(i) of the Rules and serve the public interest.

3. Section 1.420(i) authorizes the Commission to amend the FM Table of Allotments to specify a new community of license where the proposed allotment would be mutually exclusive with the licensee or permittee's present allotment. See 47 C.F.R. 1.420(i). In addition, the petition to change the community of license must serve the Commission's allotment priorities and policies² better than the allotment in the current community and not deprive the current community of its sole local transmission outlet. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7094 (1990).

4. The proposed allotment complies with Section 1.420(i). As demonstrated in the Engineering Statement of Robert M. Smith, Jr. (the "Engineering Statement"), allotment of Channel 244A to Keeseville is mutually exclusive with the present allotment of

² The FM priorities are: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982) ("FM Assignment Policies").

Channel 244A at Vergennes. See Engineering Statement at 2.³ Thus, the Petition satisfies the requirements of Section 1.420(i).

5. The proposed allotment is fully-spaced to all domestic allotments. See Engineering Statement at 2. The proposed allotment will also be fully-spaced to Canadian radio stations, provided that a restriction of facilities for the proposed allotment is imposed. Id. LBC requests that the Commission coordinate the restriction with Canada.

6. The proposed allotment better serves the public interest than the current allotment to Vergennes. LBC's proposal would provide a first local service to Keeseville, the third priority under the Commission's FM Assignment Policies. The present allotment of Channel 244A to Vergennes does not satisfy any of the first three priorities, but may qualify for the fourth and lowest priority. Allotment of a first local service to Keeseville (the third priority) better serves the public interest than retention of Channel 244A at Vergennes (the fourth priority).

7. The amendment of the FM Table of Allotments to move Channel 244A to Keeseville will not deprive Vergennes of its sole local transmission outlet. Two commercial radio broadcast stations are licensed to provide local service to Vergennes. Amendment of the FM Table of Allotments to move Channel 244A to Keeseville would

³ Mr. Smith's Engineering Statement is attached hereto as Exhibit 1.

still leave one operational commercial radio broadcast station licensed to Vergennes. Thus, Vergennes will still receive first local service.

8. Keeseville is a community for allotment purposes. Keeseville was chartered in 1878. Keeseville has a population of 1,854 and has its own elected government consisting of a mayor and four village trustees. Keeseville has its own local police force, fire department, bank, pharmacy, restaurant, grocery store, gas stations and veterinarian. Keeseville also has a library, public schools (kindergarten through sixth grade), and post office.

9. The city grade signal (70 dBu) of the proposed station at Keeseville will cover 50% or more of Burlington, Vermont. Consequently, LBC is required to make a showing that Keeseville is a separate community from Burlington. See Chattahoochee, Florida, 10 FCC Rcd 10352, 10354 (Chief, Allocations Branch, 1995). As demonstrated below, Keeseville is a separate community independent of Burlington.

10. In determining whether a proposed allotment qualifies for first local service or should be considered part of an Urbanized Area, the Commission considers three criteria. Chattahoochee, Florida, supra, 10 FCC Rcd at 10355. The first criterion is the extent to which the proposed station could provide service not only to Keeseville, but to Burlington as well. Id. The second is the size of Keeseville relative to Burlington, its proximity to Burlington, and whether Keeseville is within or outside but

proximate to the Urbanized Area of Burlington. Id. The third is the interdependence of Keeseville with Burlington. Id.

11. The city grade signal for the proposed station at Keeseville covers approximately 65% of Burlington. The Keeseville station will not be able to provide service to the entire community of Burlington. Burlington has a population of 39,127 whereas Keeseville has a population of 1,854. The city limits of the two communities are approximately 10 miles apart.

12. Keeseville is independent of Burlington. Keeseville is located in New York State, not Vermont. Lake Champlain separates the two communities by almost ten miles. There is no regular transportation service between the two communities. Keeseville and Burlington are served by separate area codes.

13. The majority of Keeseville residents do not work in Burlington but instead work in and around Keeseville. Keeseville is served by a local newspaper, the Valley News. It also has: its own elected mayor and trustees; its own zip code; a local telephone book for the Ausable Valley Phone System; and its own commercial establishments and health facilities, as described in paragraph 8, supra. Keeseville has its own police department, fire department, library, post office and elementary school. Children attending junior and senior high school attend the local high school, Ausable Valley School District, that serves several local school districts, including Keeseville. Keeseville does not rely upon Burlington for

any municipal services. Keeseville and Burlington are separate advertising markets.

14. Keeseville thus satisfies the Chattahoochee, Florida, standard as a separate community independent from Burlington. Keeseville is separate in size and proximity from Burlington and satisfies at least seven of the eight elements the Commission would consider in determining whether Keeseville and Burlington are independent.

CONCLUSION

LBC proposes that the FM Table of Allotments be amended as follows:

<u>Location</u>	<u>Current Allocation</u>	<u>Proposed Allocation</u>
Vergennes, VT	244A	----
Keeseville, NY	----	244A

The proposed channel substitution satisfies the requirements of Section 1.420(i) and serves the public interest by providing a first local service to Keeseville while retaining a first local service in Vergennes. The Petition is a preferential allotment under the Commission priorities for assigning FM allotments.

WHEREFORE, LBC respectfully submits that the public interest would be served by amending the FM Table of Allotments as proposed herein.

Respectfully submitted,

LAKESIDE BROADCASTING CORPORATION


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Its Counsel

October 4, 1996

ENGINEERING STATEMENT

In Support of:
PETITION FOR RULE MAKING

By:
LAKESIDE BROADCASTING CORPORATION

October 1996

PETITION FOR RULE MAKING

By:

LAKESIDE BROADCASTING CORPORATION

PURPOSE AND SCOPE

This Engineering Statement is prepared in support of Lakeside Broadcasting Corporation's ("LBC") ^{1/} Petition for Rule Making ("Petition") to amend the FM Table of Allotments in 47 C.F.R. 73.202(b), by the deletion of Channel 244A, Vergennes, Vermont and addition of Channel 244A, Keeseville, New York.

ALLOCATION SITUATION

Figure 1 of this Engineering Statement is a portion of the U.S. Geological Survey 7.5 X 15 Minute Topographic Quadrangle showing the proposed Allotment site at N44-24-11, W73-26-03. The proposed site is located in the town of Willsboro, Essex County, New York. The ground level at the proposed site is 398 meters above mean sea level.

^{1/} LBC is the holder of an F.C.C. Construction Permit for Channel 244A, Vergennes, Vermont (F.C.C. File No. BMPH-950626IJ) and is operating the facility under Program Test Authority from the Permit site in Westport, New York. On July 2, 1996, LBC filed an application for license to cover the construction permit (File No. BLH-960702KB) Upon grant of the Petition, LBC intends to file for a Construction Permit to move the facility to the allotment site proposed herein.

ALLOCATION SITUATION (Continued)

DOMESTIC SITUATION:

The site proposed for the allotment meets all spacing requirements to all domestic allotments or permitted/licensed facilities as specified in 47 C.F.R. 73.207(b)(1)^{2/} except the present Vergennes allotment with which it is mutually exclusive. No other modifications to the FM Table of Allotments is required nor requested by this Petition.

The proposed mountain top is presently being utilized as a communications site and is about 100' southwest of the antenna site for WCPV(FM), Essex, New York, a UHF TV translator and a cellular telephone outlet.

CANADIAN SITUATION

The present allotment site at N44-10-00, W73-15-18 is a specially negotiated short-spacing, proposed to Canada as a Class B1 operation on January 31, 1992 and accepted by Canada on May 5, 1992. The present allotment is short-spaced to CKOI-FM, Verdun, QU.

The proposed allotment site is also short-spaced per the requirements of 47 C.F.R. 73.207(b)(2) to CKOI-FM.

LBC requests that the proposed allotment be treated as a Class B1 allotment with a restriction on facilities limited to 1.9 kW ERP at an Effective Antenna Height of 246 meters above average terrain with respect to Canada.^{3/} At this ERP and HAAT the 34 dBu f(50,10) contour from the proposed allotment extends no further toward

^{2/} The present allotment site, but not the present operation, is short-spaced to WLTN-FM, Lisbon, New Hampshire. This proposal eliminates the allotment short spacing which occurred as a result of the provisions of MM Docket 88-375. A full spacing study for the proposed allotment site is included in Table 1.

^{3/} Maximum Class A facilities will limit ERP to 0.9 kW at this Effective Antenna Height.

ALLOCATION SITUATION (Continued)

CANADIAN SITUATION (Continued)

CKOI-FM (or in any direction toward Canada) than does the 34 dBu f(50,10) contour generated by a maximum Class B1 facility at the present allotment site. Figure 2 of this Statement is a portion of a New York and Montreal Sectional Aeronautical Chart showing the 34 dBu f(50,10) contours from a maximum Class B1 facility at the present allotment site and a 1.9 kW 246 meter HAAT facility from the proposed allotment site.

LBC believes this proposal should be acceptable to Canada since the new allotment affords more protection to the operation of CKOI-FM than does the present allotment.

ENVIRONMENTAL CONSIDERATIONS

All of the land area within which a Class A facility could be constructed to provide 70 dBu service to Keeseville, New York is within the boundaries of the New York State Adirondack Park. All construction within that Park requires a permit from the Adirondack Park Agency ("APA"). It is the firm policy of the APA to limit construction of towers, antennas and communications facilities to sites on which such facilities already exist. The proposed site is the only such communication site within the area capable of providing 70 dBu service to Keeseville.

The undersigned, in discussions with APA staff, has been assured that a plan to install a new tower at the proposed site falls within the APA policy of consolidation of facilities, and that any proposal to construct a new tower at any other site definitely is not within the guidelines of that policy.

COMPLIANCE WITH 47 C.F.R. 73.315

A maximum Class A facility (0.9 kW, 246 meters HAAT) at the proposed site provides 70 dBu f(50,50) coverage of the entire community of Keeseville, NY. Figure 2 of this Statement shows the 70 dBu contour generated by a maximum Class A facility and the corporate boundaries of Keeseville, NY.

COMPLIANCE WITH 47 C.F.R. 73.315 (Continued)

The terrain between the proposed allotment site and Keeseville, New York is mountainous and somewhat "shadows" Keeseville (See Figure 3 of this Statement). Based upon the coverage of WCPV(FM), Essex, NY, collocated with the proposed allotment, LBC believes the site will provide adequate coverage of the principal community and is the best site available consistent with applicable F.C.C. rules and state/local regulations.

The site proposed has no population within the immediate vicinity of the antenna and is on the highest point available consistent with environmental considerations outlined above.

CONCLUSIONS

LBC believes this Petition is consistent with the technical requirements of the Federal Communications Commission's rules, regulations and policies regarding FM allotments. LBC also believes that this Petition should be acceptable to the government of Canada since it provides greater protection, to Canadian stations, from interference than is provided by the present allotment.

A grant of this petition will provide the first local service to Keeseville, New York and will not eliminate the first local service from Vergennes, Vermont. ^{4/}

^{4/} Channel 294C2 is allotted to Vergennes, VT and is licensed as WIZN(FM).

A handwritten signature in black ink, appearing to read "Robert M. Smith Jr.", is written over a horizontal line.

Robert M. Smith Jr.

STATEMENT OF QUALIFICATIONS

I, Robert M. Smith Jr. of Windham, New Hampshire, state:

That I was retained by the applicant to prepare the Statement and Figures contained herein, and that all statements and data contained herein are true and accurate to the best of my knowledge and belief;

That I am an experienced and qualified radio broadcast engineer;

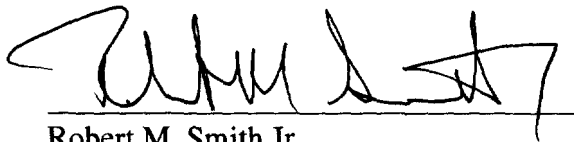
That I attended Union College in Schenectady, New York, where I majored in Electrical Engineering and Computer Science;

That I have held a First Class Radiotelephone license since 1971, and presently hold F.C.C. General Class Radiotelephone license number PG-1-7016, and was once certified by the Society of Broadcast Engineers as a Senior Broadcast Engineer (Certificate # 2422);

That I have been employed in the field of Broadcast Engineering since 1971 and have served as a technical consultant to numerous radio station since 1972;

That I am the Proprietor of R.M. Smith Associates, a broadcast technical consulting firm in Windham, New Hampshire; and

That my qualifications are a matter of record with the Federal Communications Commission, having filed applications and technical measurements with it on numerous occasions in the past.

A handwritten signature in black ink, appearing to read 'R. M. Smith Jr.', written over a horizontal line.

Robert M. Smith Jr.

LAKESIDE BROADCASTING CORPORATION

TABLE 1

FM Spacing study

Title: WXPS TO KEESVILLE (SPACING)
Channel 244A (96.7 MHz)
Database: FCC 08/29/96

Latitude: 44-24-11
Longitude: 73-26-03
Safety zone: 50 km

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	St	FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
WDEV-FM LIC	Radio Vermont, Inc.	241A	.048	44-07-37	127.2	50.71	31	
Warren	VT BLH-890821KB	96.1	703	72-55-43	307.6	19.71	CLEAR	
DOC-88-38								
ALLOC		241A		44-05-43	126.5	57.44	31	
Warren	VT DOC-83-950	96.1		72-51-23	306.9	26.44	CLEAR	
Filing window 09/20-10/18/85	**CLOSED**							
WLPL CP	Gary P. Savoie	242A	1.35	43-07-51	153.2	158.1	31	
Walpole	NH BMPH-930119IA	96.3	147	72-33-16	333.8	127.1	CLEAR	
ALLOC		243A		44-51-00	306.4	84.46	72	
Malone	NY DOC-88-66	96.5		74-17-42	125.8	12.46	CLOSE	
Filing window 10/18-11/17/88	**CLOSED**							
WVNV LIC	L.C.C. Media, Inc.	243A	2.40	44-49-37	302.5	88.59	72	
Malone	NY BLH-920511KF	96.5	110	74-22-46	121.9	16.59	CLEAR	
DOC-90-425								
W243AE CP	Christian Ministries, In	243FT	.003	44-46-35	67.5	110.8	72	
Orleans	VT BPFT-950223TB	96.5	178	72-08-25	248.4	38.77	CLEAR	
ALLOC		243D		45-02-26	303.9	129.0		
Cornwall	ON	96.5		74-47-42	122.9			
WXPS CP	Lakeside Broadcasting Co	244A	6	44-13-14	174.6	20.40	115	
Vergennes	VT BMPH-950626IJ	96.7	88	73-24-35	354.6	-94.6	SHORT	
ALLOC		244A		44-10-00	151.5	29.92	115	
Vergennes	VT DOC-89-602	96.7		73-15-18	331.6	-85.1	SHORT	
Filing window 07/23-08/22/91	**CLOSED**							
ALLOC		244A		44-12-48	99.4	123.2	115	
Lisbon	NH DOC-87-509	96.7		71-54-48	280.4	8.151	CLOSE	
Filing window 07/11-08/10/88	**CLOSED**							
WLTV-FM LIC	Profile Broadcasting Com	244A	6	44-13-11	98.8	126.5	115	
Lisbon	NH BLH-940711KC	96.7	90	71-52-07	279.9	11.55	CLOSE	
ALLOC		244A		44-32-01	276.8	133.1	115	
Canton	NY	96.7		75-05-50	95.7	18.15	CLEAR	
WVNC LIC	B & B Broadcasting, Inc.	*244A	2.60	44-32-01	276.8	133.1	115	
Canton	NY BLED-3956	96.7	94	75-05-50	95.7	18.15	CLEAR	
CKOI-FM		245C1	310	45-29-54	355.0	122.2	181	
Verdun	QU	96.9	217	73-34-16	174.9	-58.8	SHORT	

LAKESIDE BROADCASTING CORPORATION

TABLE 1 (Continued)

FM Spacing study

Title: WXPS TO KEESVILLE (SPACING)
Channel 244A (96.7 MHz)

Latitude: 44-24-11
Longitude: 73-26-03

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	St	FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
WZRT	LIC	H & D Communications Lim	246C2	1.15	43-36-17	150.9	101.5	55
Rutland	VT	BLH-850823LN	97.1	790	72-49-14	331.3	46.46	CLEAR
ALLOC			246C2		43-36-17	150.9	101.5	55
Rutland	VT		97.1		72-49-14	331.3	46.46	CLEAR
ALLOC			247C1		45-24-00	46.9	164.2	92
Sherbrooke	QU		97.3		71-54-00	228.0	72.15	CLEAR
CITE-FM			297C1	43	45-30-20	354.3	123.1	40
Montreal	QU		107.3	297	73-35-32	174.1	83.13	CLEAR
ALLOC			298C3		43-39-40	152.0	93.27	12
West Rutland	VT	DOC-89-519	107.5		72-53-25	332.4	81.27	CLEAR

>> End of channel 244A study <<

FIGURE 1

LAKESIDE BROADCASTING CORP.

ALLOTMENT SITE LOCATION

October 1996

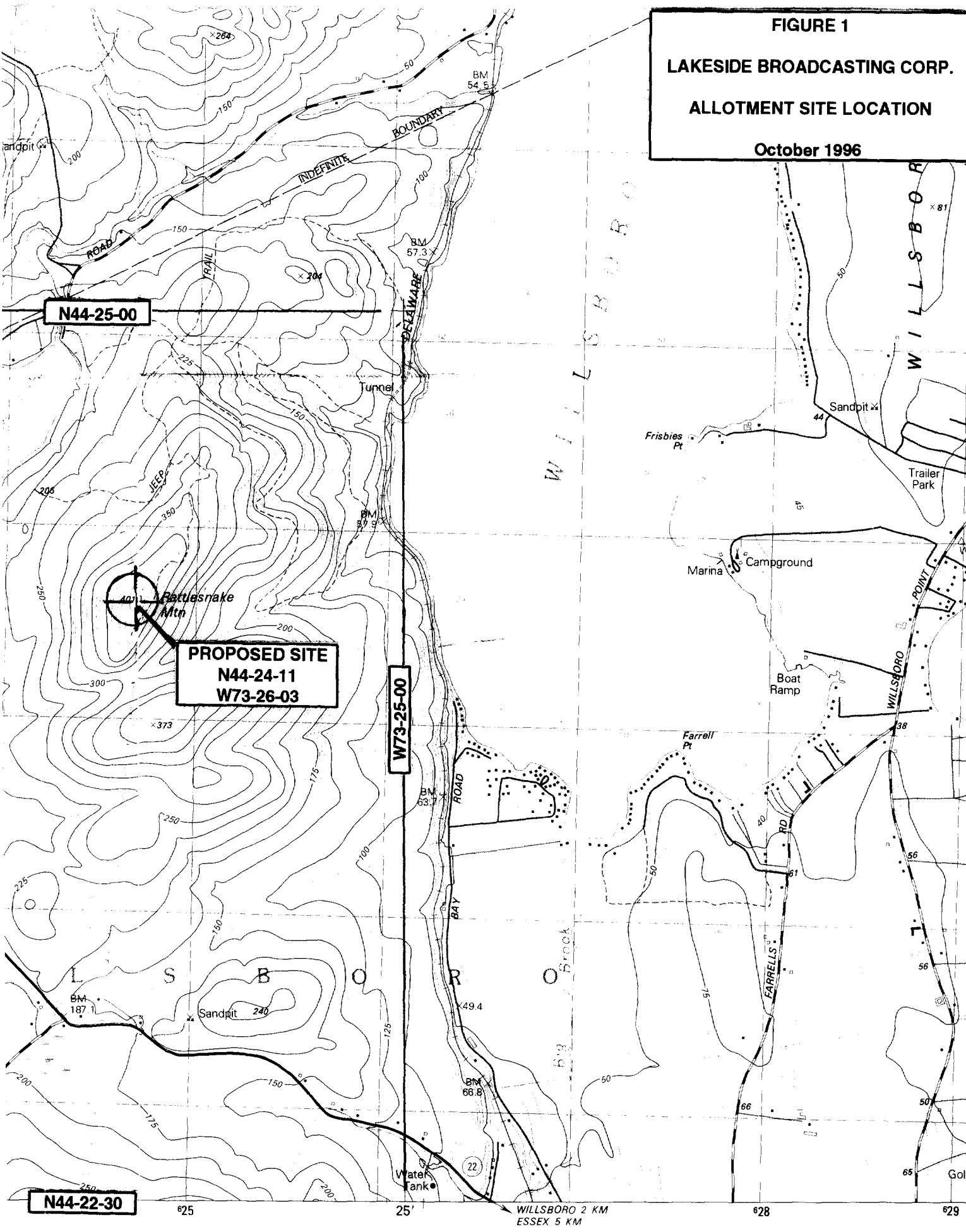
PROPOSED SITE
N44-24-11
W73-26-03

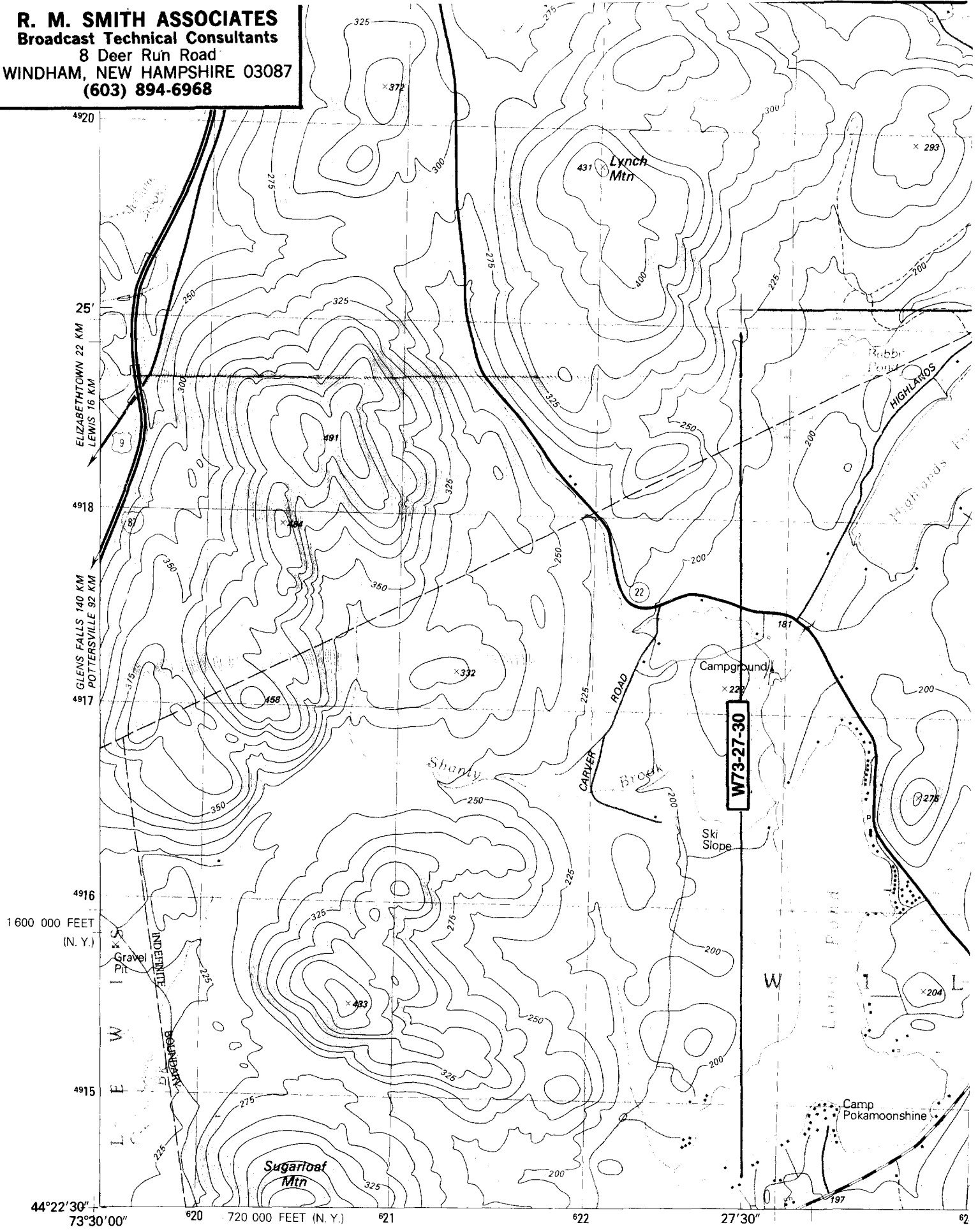
N44-25-00

W73-25-00

N44-22-30

WILLSBORO 2 KM
ESSEX 5 KM



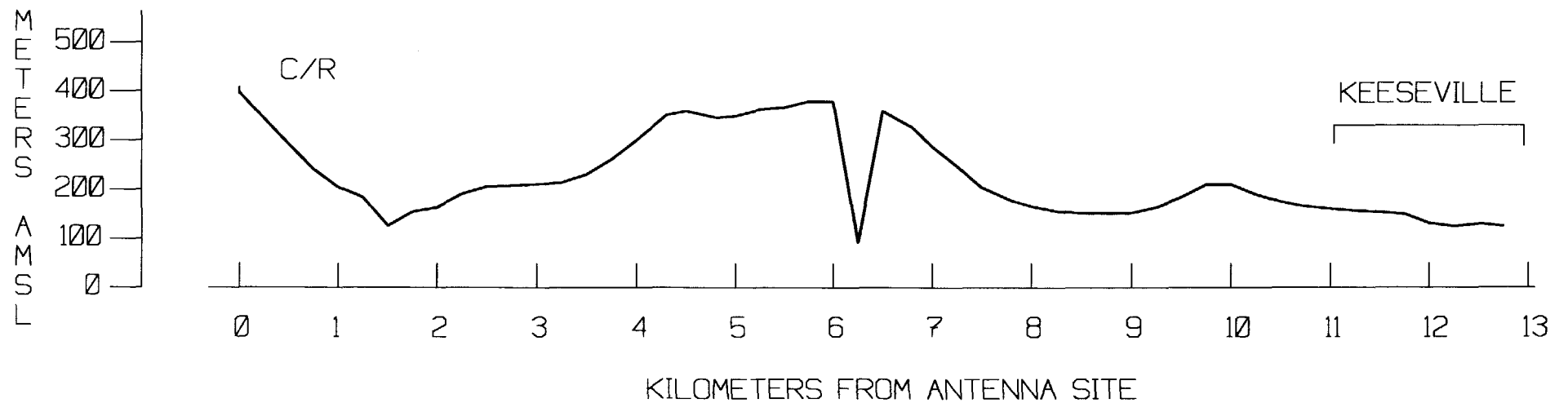


TERRAIN PROFILE DATA
FROM DMA 3 SECOND
TERRAIN DATABASE

LAKE SIDE BROADCASTING CORPORATION

FIGURE 3

TERRAIN PROFILE FROM PROPOSED ALLOTMENT SIT
TO KEESEVILLE, NY



DOCUMENT OFF-LINE

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FIGURE 2 (MAP)